

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PIERRE LAMAR MCCALL,

Petitioner,

Case Number: 2:08-CV-10489

v.

HON. MARIANNE O. BATTANI

CARMEN D. PALMER,

Respondent.

**ORDER CONSTRUING PETITIONER'S MOTION FOR CERTIFICATE
OF APPEALABILITY AS A MOTION FOR RECONSIDERATION
AND DENYING RECONSIDERATION**

Petitioner Pierre Lamar McCall filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his convictions for first-degree murder, three counts of kidnapping and four counts of possession of a firearm during the commission of a felony. On June 4, 2010, the Court issued an "Opinion and Order Denying Petition for Writ of Habeas Corpus and Denying Certificate of Appealability." Petitioner has filed a "Motion for Certificate of Appealability." Because the Court already has denied a certificate of appealability (COA), the Court construes Petitioner's motion as requesting reconsideration of that denial. Petitioner also has filed an "Application to Proceed *In Forma Pauperis* on Appeal."

Motions for reconsideration may be granted when the moving party shows (1) a "palpable defect," (2) by which the court and the parties were misled, and (3) the correction of which will result in a different disposition of the case. E.D. Mich. L.R. 7.1(h)(3). A "palpable defect" is a "defect which is obvious, clear, unmistakable,

manifest or plain." *Olson v. The Home Depot*, 321 F. Supp. 2d 872, 874 (E.D. Mich. 2004).

Petitioner asks the Court to reconsider its denial of a certificate of appealability. The Court declined to issue a COA because reasonable jurists could not "debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner" or that the issues presented were "adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted).

Petitioner's arguments for reconsideration amount to a disagreement with the Court's decision. A motion predicated on such an argument is an insufficient ground upon which to grant reconsideration. L.R. 7.1(h)(3); *see also, Meekison v. Ohio Dept. of Rehabilitation and Correction*, 181 F.R.D. 571, 572 (S.D. Ohio 1998). Petitioner fails to demonstrate that the Court's decision denying a COA was based upon a palpable defect by which the Court was misled.

Petitioner has filed an "Application to Proceed *In Forma Pauperis* on Appeal." Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). "[T]he standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith." *U.S. v. Cahill-Masching*, 2002 WL 15701, * 3 (N.D. Ill. Jan. 4, 2002). "[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit." *Walker v. O'Brien*,

216 F.3d 626, 631 (7th Cir. 2000). Although the Court held that a certificate of appealability should not issue, the Court concludes that an appeal in this case may be taken in good faith. The Court, therefore, grants Petitioner's "Application to Proceed *In Forma Pauperis* on Appeal."

Accordingly, IT IS ORDERED that Petitioner's "Motion for Certificate of Appealability" [dkt. # 13], which the court has construed as a "Motion for Reconsideration" is DENIED.

IT IS FURTHER ORDERED that Petitioner's "Application to Proceed *In Forma Pauperis* on Appeal" [dkt. #16] is GRANTED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Order was served upon Petitioner Pierre McCall, and Counsel for the Respondent.

s/Bernadette M. Thebolt
Case Manager